HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: Acq. Appeal No.3-A/2004

Dated: 09.07.2007

State of J and K through Law Department

vs. 1.Akhtar Hussain
S/O Mohd. Ali
2.Inthkab Alam
S/O Noor Mohd. Malik
3.Nissar Ahmad
S/O Sher Ali,
Tehsil,Thathri,Distt.Doda

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For petitioner(s): Mr. S.C.Gupta,Addl. Adv. General

For respondent(s): Mr.V.Bhushan Gupta, Advocate.

Vide impugned judgment of learned Sessions Judge, Doda dated 31-10-2003 all the respondents herein who were charged under section 304 (I), 451/34 RPC and 4/27 Indian Arms Act stand acquitted.

Aggrieved by the same, the State has preferred the instant appeal which stands admitted by this Court vide order dated 05-02-2004.

Pursuant to the notice all the respondents had put in appearance through Shri Ved Bhushan Gupta, Advocate. Trial Court records were also summoned

by this Court for its perusal. With the assistance of the learned counsel for both the sides I have perused the records minutely.

At the very outset I feel the necessity of re-producing the prosecution case in brief:-

> "On 20-5-93 complainant Farooq Ahmed has presented one written application/report in Police Post Thathri, stating therein that he is a resident of Vilalge Doki Kotana and running a hotel in Village Sewa Chiralla. On 19-5-93 at about 1 P.M he was in his hotel and Liaqat Ali had also come on his hotel and was sitting on a Bench in a Varandah of the hotel and was saying that on previous day Intkhab Alam, Akhtar Hussain and Nissar Ahmed had forcibly snatched one hundred rupees currency Note from his son-Mukhtiar Ahmed. In the meanwhile all the three above named accused persons with common criminal intention entered in the Varandah of the hotel and started abusing Liaqat Ali and said that why he has leveled false allegations. He and others tried to make them understand, but accused persons Intkhab Alam and Akhtar Hussain took out knives 'chura' and accused Nissar Ahmed was armed with 'danda'. The accused persons attacked in order to kill Liaqat Ali. He and others tried to intervene but accused Akhtar Hussain gave one 'Chura' (knife) blow which struck the left thigh of Liaqat Ali who received

serious injuries and fell down. The other accused persons also tried to inflict blows but he and others saved. Accused persons fled away from the spot and Liaqat Ali succumbed to his serious injuries on spot. On the receipt of this report in Police Post Thathri, Report No.17 was entered in Daily Diary dated 20-5-93 and the copy of the same was sent to Police Station Bhaderwah for registration of the case. Thereafter case FIR No.91/93 U/Ss 302/451, 34 RPC and 4/27 I.A.Act was registered in Police Station, Bhaderwah."

The prosecution in order to substantiate the charges had examined Mohd Farooq (PW-1), Mohd. Yaseen(PW-2), Mukhtiar Ahmed (PW-3), Ali Mohd. (PW-4), Abdul Aziz (PW-6), Surat Ram Patwari (PW-8) and Dr.B.L.Bhardwaj (PW-9).

The learned trial Court while discussing the entire evidence in detail has observed that from the prosecution evidence it reveals that Mohd. Farooq (PW-1) and Mohd. Yaseen (PW-2) respectively were brothers of the deceased, whereas Mukhtiar Ahmed (PW-3) was the son of the deceased. Statements of these witnesses who had projected themselves as eye witnesses have contradicted on certain material

aspects which did go to the root of the case. Ali Mohd (PW-4) the independent witness had not supported the case of the prosecution and was declared hostile. The learned trial Court did not believe the recovery part also. Non-production of Investigation Officer (ASI Bashir Ahmed) and SHO Abdul Majid Ganai has also been taken as serious flaw in the case of the prosecution.

Taking the overall view of the totality of the facts and circumstances, the trial Court has observed that the prosecution has not been able to prove the case against the respondents beyond any shadow of reasonable doubt.

Mr. Gupta, learned Additional Advocate General has not been able to pin point any basic infirmity in the case of the prosecution calling for interference by this Court. Even otherwise after re-scanning the entire evidence on record once again, I also don't find any cogent reasons for disturbing the order of acquittal.

The scope of interference by this Court in the judgment of acquittal is very limited. Principles governing the interference in the judgment of acquittal

has been laid down in case **Bhim Singh versus State of Haryana** 2002 (10) SCC 461 by making the following observations:-

> "Before concluding, we would like to point out that this Court in a number of cases has held that an appellate court entertaining an appeal from the judgment of acquittal by the trial court though entitled to re-appreciate the evidence and come to an independent conclusion, it should not do so as a mater of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial Court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court."

In a very recent judgment of Hon'ble Apex Court in case of **State of Madhya Pradesh vs. Bacchudas** 2007 CRI.L.J.1661, their lordships of the Hon'ble Apex Court have held that in an appeal against acquittal, no doubt the Court can review the entire evidence, but would interference only if there are compelling and

substantial reasons. In paragraph-9 of the said judgment their lordships have observed as under:-

> "There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v. State of M.P, 2003 (3) SCC 21). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment

is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. These aspects were highlighted by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793); Ramesh Babulal Doshi v. State of Gujrat (1996 (9) SCC 225); Jaswant Singh v. State of Haryana (2000 (4) SCC 484); Raj Kishore Jha vs. State of Bihar (2003 (11) SCC 519); State of Punjab v. Karnail Singh (2003 (11) SCC 271; State of Punjab v. Phola Singh (2003 (11) SCC 58); Suchand Pal v. Phani Pal (2003 (1) SCC 527) and Sachchey Lal Tiwari v. State of U.P (2004 (11) SCC 410)."

After finding no substantial or compelling reasons for disturbing the well reasoned view already taken by the learned trial Court on the basis of appreciation of the evidence on record, I hereby dismiss the instant appeal.

(Virender Singh)
Judge

11-07-2007
Jammu*Ved-PS*

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: Cr. Acq. Appeal No.1/2005

Dated: 09.07.2007

State vs. 1.Rehmat Ali alias Miyan
2.Reham Ali Ss/o Sain
R/o Bye Pass Bajalta, Tehsil Jammu

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For petitioner(s) : Mr.Vinod Bakshi, Dy.Adv. General vice Mr.B.S.Salathia,Addl. Advocate General.

For respondent(s) : Ms.Monica Kohli, Advocate vice Mr.O.P.Sharma, Adv.

Both the respondents were charged under sections 302/323/34 R.P.C for intentionally killing Jalal-Din (since deceased) on 21-08-1999 vide impugned judgment of learned Additional Sessions Judge, Jammu dated 28-10-2004, respondent-Rehmat Ali alias Miyan has been convicted under section 302, R.P.C, whereas respondent-Reham Ali stands convicted under section 323 R.P.C. Respondent-Rehmat Ali has been sentenced to seven years rigorous

imprisonment, whereas respondent-Reham Ali was sentenced for the period already undergone by him.

Since the learned trial Court has disturbed the main charge of section 302 R.P.C qua both the respondents, the State has filed the instant appeal.

Vide order dated 07-05-2005, notice was issued to the respondents. Pursuant to the notice Mr.O.P Sharma, Advocate has put in appearance on behalf of the respondents. With the assistance of the learned counsel for both the sides I have gone through the impugned judgment minutely.

Mr.Vinod Bakshi, learned Deputy Advocate General submits that from the evidence on record, it is established that both the respondents had common intention to assault Jalal-Din and, therefore, the learned trial Court has not properly appreciated the evidence in the right perspective for convicting them under section 302/323/34 R.P.C. According to Mr.Bakshi may be the death of Jalal-Din has occurred on account of the injury attributed to Rehmat Ali, but the evidence on record is that Reham Ali also gave Blows to the deceased and the complainant and, therefore, segregation of the case qua him for convicting under section 323 R.P.C by the trial Court is not correct.

Primarily on the basis of the aforesaid submission, Mr. Bakshi prays for the admission of the instant appeal.

Learned counsel for the respondents, however, has supported the view already taken by the learned trial Judge. On a specific query being put to either sides, it has been brought to my notice by the learned counsel for the respondents that since respondent-Rehmant Ali alias Miyan had already suffered his entire sentence, he has not preferred any appeal in this Court. So far as respondent-Reham Ali the other accused is concerned he too did not prefer any appeal in this Court as after suffering conviction under section 323 R.P.C, sentence awarded to him, already undergone by him.

I do not feel the necessity of reproducing of the factual back drop of the prosecution case once again. From the evidence it has come on record that the occurrence had taken place over the Banna of the land and the main accused Rehmant Ali picked up a stone from the land and inflicted a blow on Jalal-Din. The findings of the learned trial Court is that there was no pre-meditation or pre-planning. Deceased Jalal-Din was of the age of 75 years. For segregating the case of the prosecution qua the present respondent, the learned trial Court has observed as under:-

> "Facts and circumstances of this case categorically show that the occurrence took place over the 'Banna' of the land. Accused Rehmat Ali picked up a stone from the land and inflicted a blow on Jalal Din who did as a consequence of

forceful blunt impact of the stone. There is no evidence about pre-meditation or pre-planning or pre-concert regarding the commission of offence of causing death of any person, though the knowledge of causing such bodily injury as would be sufficient in the ordinary course of nature and things, on the person of 75 years old person cannot be denied for accused Rehmat Ali. Accordingly, offence under section 302 RPC cannot be said to have been made out against him. The only offence that stands proved against accused Rehmat Ali is under section 304-II RPC and he is accordingly convicted thereunder. Similarly accused Raheem Ali cannot be held to have shared common intention with accused Rehmat Ali of causing death of Jalal Din but there is ample evidence to show that he acted un-provokingly and inflicted 'lathi' blow on the persons of Mian and Jalal Din during the occurrence. His act squarely falls for conviction under section 323 RPC and he is accordingly convicted thereunder."

I do not find any illegality on the face of it which would call any interference of this Court in disturbing the judgment of conviction vide which the main offence has been altered by the learned trial Court. Even otherwise, the scope of interference in an appeal of acquittal is very limited. In a latest judgment of Hon'ble

Apex Court rendered in **Kallu @ Masih and others versus State of Madhya Pradesh 2006 (1) RCR (Criminal) 427** in which their lordships have observed as under:-

> "While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court."

Having scrutinized the impugned judgment very minutely, I find no such infirmity, perversity or unreasonableness on any count inviting interference of this Court.

Resultantly, I find no merit in the instant appeal, the same is, hereby, dismissed at this stage itself.

(Virender Singh)
Judge

11-07-2007
Jammu*Ved-PS*